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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,973	02/04/2004	Steven C. Shanks	206-024	5207
33354 7590 02/25/2009 ETHERTON LAW GROUP, LLC 5555 E. VAN BUREN STREET, SUITE 100 PHOENIX, AZ 85008				
EXAMINER JOHNSON III, HENRY M				
ART UNIT		PAPER NUMBER		
3769				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/772,973

Examiner

HENRY M. JOHNSON III

Applicant(s)

SHANKS ET AL.

Art Unit

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2008.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4, 10 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 10 and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-546)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Arguments

Applicant's arguments filed November 7, 2008 with respect to claims 4, 10 and 14-19 have been fully considered but they are not persuasive. Haase teaches the device is provided with switches or power regulating circuits allowing the user to actuate at least two of the lasers independently. This clearly implies simultaneous operation. While Haase does teach an embodiment that prevents simultaneous operation, it is an alternative embodiment. The examiner also notes that the claimed term "substantially simultaneous" could be interpreted as rapidly switched. It is further noted for the record, that the operation of the lasers is heavily related to the intended use of the device rather than structure. Each of the Applicant's lasers includes its own independent control means (Fig. 1). Only the power supply is common to both. Thus the operation of the lasers is operator dependent, separating the on and off times of the lasers as a definite structural feature.

Regarding Searfoss et al., the arguments are related to intended use. The device of Searfoss et al. is capable of being directed to tissue and the movement of the tissue would provide relative movement. Regarding the combination of Searfoss et al. and Haase, the use of a newer, alternative light source is an obvious migration of technology that would not have escaped a skilled artisan.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 4, 10 and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication US 2002/0071287 to Haase. Haase teaches a laser pointer having multiple laser diode elements emitting collimated visible light beams at multiple wavelengths. The device includes a red laser diode capable of producing a red laser beam (warm color), a green (or blue) laser diode capable of producing a green (or blue) laser beam (cool color), a battery (Fig. 1, # 1), and an electrical switching circuit capable of supplying power to the red laser diode or the green laser diode. Preferably the beams are collimated and are substantially parallel (not intersecting) and the device weighs no more than 450 grams (paragraph 0012). The switches or power regulating circuits allow the user to actuate at least two of the lasers independently, implying simultaneous operation (paragraph 0016). The switches or power regulating circuits may allow the user to dim the power output of a laser (paragraph 0016). In addition to optics for collimating the laser beams, optics such as lenses or diffractive optics may be provided. The additional optics may be used to create beams of different shapes or project images such as lines (linear), circles or arrows. This inherently teaches a linear and circular shape. Preferably the optics are easily moved and removed to and from the beam so the user can conveniently change beam shape as well as color (paragraph 0018). The Merriam-Webster Collegiate Dictionary defines a circuit as "the complete path of an electric current including the source of electrical energy". The switch, battery and wiring clearly meet the definition and are clearly capable of providing continuous beams or pulsing the beams by switch operation. It is noted that the manner in which a device used is intended use. If a device is capable of operating as claimed, it anticipates the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3769

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,046,494 to Searfoss et al. in view of U.S. Patent Application Publication US 2002/0071287 to Haase. Searfoss et al. disclose a device for providing light pulses of controlled color, image size, intensity and duration are displayed in a generally energy-increasing sequence (Col. 2, lines 40-44) that may be used for balancing the sympathetic and parasympathetic nervous systems and a stimulation of the immune system (Col. 2, lines 62-65). Two light sources may be arranged in parallel such that the light displayed to each eye of observer is individually controllable in terms of color, size and intensity. A partition extending up to observer ensures that the right eye cannot see what the left eye sees and vice versa (non-intersecting beams). A controller (Fig. 3, # 36) is disclosed as capable of individually controlling current conducted to the two light sources (Col. 4, lines 45-50) including varying the pulse rate (Col. 4, line 61). Filters are provided to include eight different wavelengths of light within the visible spectrum. Since the visible spectrum includes the range from violet to red, it is inherent that both cool and warm colors are capable of being produced. Searfoss et al. do not teach the use of laser energy in a handheld delivery device. As technology produced smaller and more

efficient light sources in the form of semiconductor lasers, a skilled artisan would be motivated to include such new technology in older devices and look to related laser devices including devices for medical, industrial and other intended uses. Haase as discussed above provides a viable alternative configuration for the device of Searfoss et al. that teaches laser sources. It would have been obvious to one skilled in the art to use laser light sources and a portable handheld enclosure as taught by Haase in the invention of Searfoss et al. to reduce the size and make a portable device as such trends are well known and obvious in the laser arts.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to HENRY M. JOHNSON III at telephone number (571)272-4768.

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art Unit 3769